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HOUSE BILL 572

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Donald E. Bratton

AN ACT

RELATING TO OIL AND GAS; AMENDING SECTIONS 70-2-13 AND 71-5-17.5 NMSA 1978 (BEING LAWS 1955, CHAPTER 235, SECTION 1 AND LAWS 1979, CHAPTER 326, SECTION 5, AS AMENDED) TO ELIMINATE THE REQUIREMENTS FOR A TRANSCRIPT IN EVERY CASE HEARD BY A HEARING EXAMINER APPOINTED BY THE OIL CONSERVATION DIVISION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 70-2-13 NMSA 1978 (being Laws 1955, Chapter 235, Section 1, as amended) is amended to read:

"70-2-13. ADDITIONAL POWERS OF COMMISSION OR DIVISION-- HEARINGS BEFORE EXAMINER-- HEARINGS DE NOVO.-- In addition to the powers and authority, either express or implied, granted to the oil conservation commission or division by virtue of the statutes of the state [~~of New Mexico~~], the division is [~~hereby~~] authorized and empowered in prescribing its rules of order or

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1 procedure in connection with hearings or other proceedings  
2 before the division to provide for the appointment of one or  
3 more examiners to be members of the staff of the division to  
4 conduct hearings with respect to matters properly coming before  
5 the division and to make reports and recommendations to the  
6 director of the division with respect thereto. Any member of  
7 the commission or the director of the division or his  
8 authorized representative may serve as an examiner as provided  
9 ~~[herein]~~ in this section. The division shall promulgate rules  
10 and regulations with regard to hearings to be conducted before  
11 examiners, and the powers and duties of the examiners in any  
12 particular case may be limited by order of the division to  
13 particular issues or to the performance of particular acts. In  
14 the absence of any limiting order, an examiner appointed to  
15 hear any particular case ~~[shall have]~~ has the power to regulate  
16 all proceedings before him and to perform all acts and take all  
17 measures necessary or proper for the efficient and orderly  
18 conduct of ~~[such]~~ the hearing, including the swearing of  
19 witnesses and receiving of testimony and exhibits offered in  
20 evidence subject to such objections as may be imposed, and  
21 shall cause a complete record of the proceeding to be made ~~[and~~  
22 ~~transcribed]~~ and shall ~~[certify]~~ provide the ~~[same]~~ record to  
23 the director of the division for consideration together with  
24 the examiner's report ~~[of the examiner]~~ and ~~[his]~~  
25 recommendations ~~[in connection therewith]~~. A transcript of the

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1 testimony shall be prepared, accompanied by a reasonable  
2 statement of the necessity thereof, when deemed necessary by  
3 the division or at the request of a party who appeared at the  
4 hearing. The director of the division shall base the decision  
5 rendered in any matter or proceeding heard by an examiner upon  
6 the [~~transcript of testimony and~~] record made by or under the  
7 supervision of the examiner in connection with [~~such~~] the  
8 proceeding and the report and recommendation of the examiner,  
9 and [~~such~~] the decision shall have the same force and effect as  
10 if the hearing had been conducted before the director [~~of the~~  
11 ~~division~~]. When any matter or proceeding is referred to an  
12 examiner and a decision is rendered [~~thereon~~], any party of  
13 record adversely affected [~~shall have~~] has the right to have  
14 the matter heard de novo before the commission upon application  
15 filed with the division within thirty days from the time [~~any~~  
16 ~~such~~] the decision is rendered. "

17 Section 2. Section 71-5-17.5 NMSA 1978 (being Laws 1979,  
18 Chapter 326, Section 5, as amended) is amended to read:

19 "71-5-17.5. ADDITIONAL POWERS OF COMMISSION OR DIVISION--  
20 HEARINGS BEFORE EXAMINER--HEARINGS DE NOVO.--In addition to the  
21 powers and authority, either express or implied, granted to the  
22 [~~oil conservation~~] commission or division, the division may, in  
23 prescribing its rules of order or procedure in connection with  
24 hearings or other proceedings before the division, provide for  
25 the appointment of one or more examiners to be members of the

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1 staff of the division to conduct hearings with respect to  
2 matters properly coming before the division and to make reports  
3 and recommendations to the director of the division [~~with~~  
4 ~~respect thereto~~]. Any member of the commission or the director  
5 of the division or his authorized representative may serve as  
6 an examiner. The division shall promulgate rules and  
7 regulations with regard to hearings to be conducted before  
8 examiners, and the powers and duties of the examiners in any  
9 particular case may be limited by order of the division to  
10 particular issues or to the performance of particular acts. In  
11 the absence of any limiting order, an examiner appointed to  
12 hear any particular case may regulate all proceedings before  
13 him and perform all acts and take all measures necessary or  
14 proper for the efficient and orderly conduct of the hearing,  
15 including the swearing of witnesses, receiving of testimony and  
16 exhibits offered in evidence subject to objections as may be  
17 imposed, and shall cause a complete record of the proceeding to  
18 be made [~~and transcribed~~] and shall [~~certify~~] provide the same  
19 to the director of the division for consideration together with  
20 the examiner's report [~~of the examiner~~] and [~~his~~]  
21 recommendations in connection therewith. A transcript of the  
22 testimony, accompanied by a reasonable statement of the  
23 necessity thereof, shall be prepared when deemed necessary by  
24 the division or at the request of a party who appeared at the  
25 hearing. The director of the division shall base the decision

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1 rendered in any matter or proceeding heard by an examiner upon  
2 the [~~transcript of testimony and~~] record made by or under the  
3 supervision of the examiner in connection with the proceeding  
4 and the report and recommendation of the examiner, and the  
5 decision shall have the same [~~force and~~] effect as if the  
6 hearing had been conducted before the director [~~of the~~  
7 ~~division~~]. When any matter or proceeding is referred to an  
8 examiner and a decision is rendered [~~thereon~~], any party of  
9 record adversely affected may have the matter heard de novo  
10 before the commission upon application filed with the division  
11 within thirty days from the time the decision is rendered. "

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